IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1061 of 1994
With
CRIMINAL APPEAL No. 1089 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJUBHAI RRTHODIA
Versus
STATE OF GUJARAT

Appearance:
MR FB BRAHMBHATT for the appellants in Criminal Appeal No. 1061/94.
MR KB ANANDJIWALA for the appellant in Criminal Appeal No.1089/94.
MR KG SHETH, APP for Respondent in both the appeals.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

On a trial held by the learned Sessions Judge, Panchmahals at Godhra, three appellants in Criminal Appeal No. 1061/94 and sole appellant in Criminal Appeal No.1089/94 have been convicted of the offences punishable under sections 302, 232, 324, 506(2) read with section 114 of the Indian Penal Code, section 135 of the Bombay Police Act as well as section 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Sessions Case No. 62(A)/93 and punished with R.I. for life and fine of Rs. 500/or in default to undergo R.I. for 3 months.In both these appeals, common judgment dated October 7, 1994 rendered by the learned Sessions Judge, Panchmahals at Godhra in Sessions Case No. 62(A)/93 is challenged. As common questions of facts and law arise for our consideration, we propose to dispose them of by this common judgment.

2. The complainant i.e. Dhanjibhai Vaghjibhai is a resident of village Pavagadh, Taluka : Halol, District : Panchmahals. At the time of incident, he was a member of joint family consisting of his brothers, parents etc. and was residing jointly with them. His elder brother Raghavbhai was serving as Head Constable at Limkheda Police Station of Panchmahals District. The name of his another brother is Harjibhai, who is a Lawyer by profession; whereas his 3rd brother was a driver. It may be stated that the complainant and his brothers are having their own agricultural lands and the complainant was looking-after agricultural operations.

3. The appellant no.2 in Criminal Appeal No.1061/94 i.e. Bhanuprasad Kantilal Shrimali is residing in the falia (street) of the complainant and belongs to Gorda community. According to the prosecution, Bhanuprasad was a head strong person and had habit of consuming liquor. The case of the prosecution is that Bhanuprasad after consuming liquor, used to quarrel with the persons residing in the falia and, therefore, many complaints were lodged against him at the police station. In one such incident, he had assaulted Valiben, residing in the falia of the complainant and given her a knife blow, regarding which a complaint was lodged against him. The prosecution claims that family of the complainant is a respected as well as leading family in the falia and, therefore, those who were residing in the falia were coming to the house of the complainant for the purpose of

taking advice as well as for solution of their problems. Because of erratic behaviour of Bhanuprasad, complaints were made and, therefore, brother of the complainant i.e. Raghavbhai, who was serving as Head Constable, had scolded Bhanuprasad and advised him not to quarrel with anybody in the village. The prosecution claims that thereupon Bhanuprasad was annoyed and had given threats to the members of family of the complainant.

4. The incident in question took place on August 4, 1993. Two days prior to the date of the incident, a calf belonging to the family of the complainant was missing and, therefore, on August 4, 1993, the complainant i.e. Dhanjibhai and his brother Raghavbhai had gone in search of the missing calf. According to the prosecution, they had left their residential premises at about 7.00 P.M. and had reached near village Jepura at about 8.45 P.M. It is the case of the prosecution that when the complainant and his brother had reached the temple of Baliya Dev, they had seen accused Bhanuprasad Kantilal Shrimalia, Raju Raiyaji, Kanti Raiyaji and Pratap Amarsinh Baria standing there with their cycles. On seeing the complainant and his brother, Bhanuprasad had shouted that the complainant and his brother had become bullies of the falia and Raghavbhai would not be spared. The prosecution claims that accused Bhanuprasad had suddenly rushed towards the complainant and his brother with farsi (battleaxe) and given farsi blow on the hand of the complainant. It is the case of the prosecution that when Raghavbhai, who was brother of the complainant, had tried to save the complainant, accused Bhanuprasad had given farsi blow on the head of Raghavbhai, due to which Raghavbhai had fallen down. What is claimed by the prosecution is that when the complainant had tried to save his brother Raghavbhai, accused Bhanuprasad had given blow with back portion of farsi to the complainant; whereas accused Kantibhai Raiyajibhai had given stick blows on back of the complainant. Further the case of the prosecution is that accused Rajubhai Raiyajibhai had given hockey blows to the complainant on his chest. It is the case of the prosecution that due to assault mounted on him by the accused, the complainant had tried to run away from the place of incident, but accused Pratapsinh Amarsinh Baria had given a kick blow, as a result of which the complainant had fallen down on the ground. The case further put-up by the prosecution is that Raghavbhai was assaulted by Rajubhai Raiyajibhai by means of hockey and a blow was given with such a force that the hockey had broken into three pieces. According to the prosecution, accused Bhanuprasad had given 3 to 4 blows with farsi to Raghavbhai; whereas accused

Pratapsinh had pelted stones on Raghavbhai. It may be stated that another brother of the complainant viz. Premji Vaghji in company of witness Dahyabhai Saburbhai had also gone in search of the missing calf to village Gokulpura and while coming back, they had heard shouts near village Jepura and, therefore, they had also gone to the place of incident. The prosecution claims that witness Dahyabhai Saburbhai had tried to intervene and save the deceased from being assaulted and at that time accused Rajubhai Raiyajibhai had given fist blow on his nose, due to which he had sustained a bleeding injury. As deceased Raghavbhai was assaulted, the complainant had shouted for help and on hearing his shouts, Narvatsinh Amarsing Master,Takhatsinh Prabhatsing, Ramsinh Himatsinh and others who were residing adjoining the place of incident had come there and on their arrival, the accused had run away on their cycles towards village Pavagadh. The prosecution case is that the persons who had rushed to the scene of offence on hearing shouts of help, had found that Raghavbhai had died on the spot. Therefore, Narvatsinh Master had gone to inform the Sarpanch of village Jepura. The sarpanch and other persons had come to the place of incident and injured Dhanjibhai as well as sarpanch had gone to Halol Police Station for lodging complaint, where first information report as given by injured Dhanjibhai was registered. The first information report lodged by injured Dhanjibhai was investigated by Mr. Pathak, Senior Police Sub-Inspector of Halol Police Station. During the course of investigation, the accused were arrested as well as other steps, such as, holding of inquest on the dead body of the deceased, sending the dead body for postmortem examination, recovery of weapons used in commission of crime etc. were taken. On the conclusion of investigation the accused were chargesheeted for the offences punishable under sections 302, 323, 324, 506(2) read with section 114 of the Indian Penal Code, section 135 of the Bombay Police Act as well as section 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the Court of learned Judicial Magistrate, First Class, Halol. As the offence punishable under section 302 I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Panchmahals at Godhra for trial, where it was numbered as Sessions Case No. 62(A) of 1993. The charge was framed at Exh.3 against the accused of the offences punishable under sections 302, 323, 324, 506(2) read with section 114 I.P.C., section 135 of the Bombay Police Act as well as sections 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The charge was read over and explained to the accused,

who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined; (1) Dhanjibhai Vaghjibhai Vankar, P.W.1 at Exh.12, (2) Premjibhai Vaghjibhai, P.W.2 at Exh.14, (3) Babubhai Ahmedbhai Shekh, P.W.3 at Exh.15, (4) Vanrajbhai Talshibhai Patel, P.W.4 at Exh.17, (5) Dahyabhai Saburbhai, P.W.5 at Exh.19, (6) Dr. Sunil Nagori, P.W.6 at Exh.20, (7) Rajendra Kantilal, P.W.7 at Exh.28, (8) Govindbhai Samatbhai, P.W.8 at Exh.30, (9) Rajukumar Ratilal Shah, P.W.9 at Exh.32, (10) Nisar Ahmed Raheman Khatri, P.W.10 at Exh.34, (11) Pravinsinh Parbatsinh, P.W.11 at Exh.36, (12) Narvatsinh Amarsinh, P.W.12 at Exh.37, (13) Harjibhai Vaghjibhai Helaiya, P.W.13 at Exh.43, (14) Mansing Somabhai, P.W.14 at Exh.44, (15) Rajeshkumar Chunilal Pathak, P.W.15 at Exh.45, and (16) Govindbhai S.Parekh,P.W.16 at Exh.53, to prove its case against the accused. The prosecution also produced documentary evidence, such as, complaint lodged by injured Dhanjibhai, inquest panchnama, postmortem notes prepared by Dr. Nagori, panchnama of place of occurrence etc. in support of its case against the accused. After recording of evidence of prosecution witnesses was over, the learned Sessions Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution and also recorded their further statements as required by section 313 of the Code of Criminal Procedure, 1973. In their further statements, the accused denied the case of the prosecution, but did not examine any witness in support of their defence. The original accused nos.1,2 & 4 submitted their written statement; whereas one certificate dated August 9, 1994 issued by Talati-cum-Mantri of Jepura Group Gram Panchayat was produced to establish that street lights in Mota Jepura, Nana Jepura, Abhetani Muvado and Ganeshpuri falia as well as Gokalpura village were not working since last five years. The appellant in Criminal Appeal No.1089/94 also produced a report submitted by him to the competent officer indicating that on the date of the incident, he was dischaging duties as watchman in the Office of Archaeological Survey of India, Vadodara and was not involved in the incident as was claimed by the prosecution.

5. On appreciation of evidence adduced by the prosecution and after hearing the learned counsel for the parties, the learned Judge deduced that it was proved by the prosecution that deceased Raghavbhai had died a homicidal death. According to the learned Judge, it was proved by the prosecution that the accused had formed an unauthorised assembly to fulfil their common intention of committing murder of Raghavbhai and causing injuries to

complainant Dhanjibhai. The learned Judge held that it was proved by the prosecution that accused Bhanuprasad was armed with battleaxe; whereas Rajubhai Raiyajibhai was armed with hockey and Kantibhai Raiyajibhai was armed with stick, whereas accused Pratapsinh Amarsinh Baria was armed with stone to execute their common intention of committing murder of the deceased and causing injuries to the complainant. According to the learned Judge, the prosecution was successful in establishing that accused Bhanuprasad had caused serious injuries to the deceased and the complainant by deadly weapon like battleaxe. Further the learned Judge deduced that it was proved by the prosecution that all the accused to fulfil their common intention to commit murder of the deceased and cause injuries to the complainant, had caused injuries as claimed by the prosecution. After referring to the evidence of injured complainant Dhanjibhai, the learned Judge held that it was proved by the prosecution that accused Bhanuprasad had caused injuries to the complainant with sharp cutting instrument i.e. battleaxe. What was held by the learned Judge was that it was established beyond reasonable doubt that accused Rajubhai Raiyajibhai had given blow with a stick; whereas accused Kantibhai Raiyajibhai had given hockey blow and accused Pratapsinh Amarsinh Baria had given stone blow to the deceased. Further according to the learned Judge, all the accused were armed with deadly weapons in a public area and had, therefore, committed breach of notification issued by the District Magistrate under the provisions of the Bombay Police Act. After holding that the deceased was a member of scheduled caste, the learned Judge held that the accused had intentionally insulted him and given threats and thereby committed offences punishable under section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Judge further held that it was proved by the prosecution that witness Dahyabhai Saburbhai had received simple injury due to fist blow given by accused Rajubhai Raiyabhai. In view of the above-referred to conclusions, the learned Judge held that the accused were guilty of the offences punishable under sections 323, 324, 506(2) read with section 114 of the Indian Penal Code as well as section 135 of the Bombay Police Act and sections 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by judgment dated October 7, 1994. The learned Judge thereafter heard the accused on the question of sentence and has punished all the accused with R.I. for life and fine of Rs.500/- i/d. R.I. for 3 months,by judgment dated October 7, 1994, which has given rise to the above-referred to two

appeals.

6. Mr. K.B.Anandjiwala,learned counsel for the appellant in Criminal Appeal No.1089/94 and Mr. F.B.Brahmbhatt, learned counsel for the appellants in Criminal Appeal No. 1061/94 submitted that the incident had taken place in a dark night of rainy season and as there was no light with the help of which the accused could have been identified, the learned Judge should not have convicted the appellants. According to the learned counsel, panchnama of place of occurrence does not indicate that at the time of preparing panchnama, the bulb on D.P.Post was burning and as there is no reliable evidence to establish that there was any light at the place where the incident had taken place, atleast benefit of doubt ought to have been given to the appellants. After referring to the evidence of injured complainant, the learned counsel submitted that he had not mentioned the names of witness Premjibhai Vaghjibhai and witness Dahyabhai Saburbhai as those who had seen the incident and, therefore, the whole evidence being of doubtful nature, the accused ought to have been acquitted. It was claimed that there is delay in filing first information report by injured Dhanji and as detailed complaint was filed by the complainant after consultation with his brother Harjibhai Vaghjibhai Helaiya, who is a practising advocate, false implication is not ruled out and, therefore, the appeals of the appellants should be accepted. The learned counsel emphasised that accused Bhanuprasad was falsely implicated in the present case by injured Dhanji as Dhanji and his brothers wanted to usurp his property and in view of enmity between accused Bhanuprasad on one hand and complainant and others on the other hand, the prosecution case ought to have been disbelieved. The learned counsel referred to the medical evidence on record and submitted that the version putforth by Dhanji that the deceased was assaulted with hockey and sticks, is not corroborated by medical evidence at all and, therefore, his claim that he had witnessed the incident, ought to have been rejected by the learned Judge. According to the learned counsel, the conduct of the complainant was most unnatural, inasmuch as he had not given names of the present accused as assailants to Narvatsinh, who had come on the spot immediately and as the evidence of the complainant is improbable as well as full of inconsistencies, benefit of doubt ought to have been given to the appellants. The learned counsel for the appellants referred to the evidence of witness Premji Vaghji as well as that of Dahyabhai Saburbhai in extenso and submitted that as these witnesses were got-up to back-up a false case, the

appellants should be acquitted. So far as evidence of witness Dahyabhai Saburbhai and witness Premji Vaghji is concerned, it was claimed that they had no opportunity to return to village Jepura before the incident had taken place and, therefore, their evidence could not have been relied upon by the learned Judge. The learned counsel for the appellants pointed out contradictions as well as omissions appearing in the evidence of prosecution witnesses and claimed that the evidence tendered by the prosecution witnesses being unreliable, should be discarded by the Court. According to the learned counsel, from the place of incident, a cycle was found, but no investigation was made by the investigating officer to find out whether it belonged to any of the accused or the deceased and in view of defective investigation, benefit of doubt should be given to the appellants. The learned counsel further submitted that the appellant in Criminal Appeal No. 1089/94 was not present at the place of incident, as he was serving as watchman in the Office of Archaeological Survey of India, Vadodara and, therefore, he is entitled to a reasonable benefit of doubt. What was emphasised was that the witnesses examined by the prosecution were not witnesses of truth and, therefore, after disbelieving the prosecution case, the appeals should be allowed.

7. Mr. K.G.Sheth, learned A.P.P. submitted that the injured complainant was knowing all the accused even before the incident had taken place and, therefore, he would not commit any mistake in identifying the accused as perpetrators of crime. According to the learned counsel for the State, evidence of injured complainant Dhanji is corroborated in material particulars not only by medical evidence on record which is tendered by witness Dr.Nagori, but also by evidence of two other eye witnesses, namely, Premji Vaghji and Dahyabhai Saburbhai and, therefore, the learned Judge did not commit any error in convicting the appellants of the offences with which they were charged. According to the learned Additional Public Prosecutor, farsi was produced by accused Bhanuprasad Kantilal Shrimali at the Police Station before he was arrested which was found to be blood stained and as the report of Serologist establishes that farsi had same group of blood as that of the deceased, it would be reasonable to hold that Bhanuprasad was near the deceased when the incident had taken place and had all opportunity of committing crime in question. What was claimed was that no enmity worth the name is suggested by the defence at all so far as appellants in Criminal Appeal No. 1061/94 are concerned and, therefore, their false implication in such a serious case

is totally ruled out. The learned counsel stressed that though there are some contradictions as well as omissions in the evidence of prosecution witnesses, they are neither vital nor material so as to affect the prosecution case and, therefore, it cannot be said that any error was committed by the learned Judge in placing reliance on the evidence of the witnesses examined by the prosecution. The learned counsel pleaded that no evidence worth the name was adduced by accused Pratapsinh Amarsinh Baria to establish that he was not present at the place of incident, but he was discharging duties as watchman in the Office of Archaeological Survey of India at Vadodara and, therefore, plea of alibi having not been proved satisfactorily, no benefit of doubt should be given to the said appellant. In the alternative, the learned counsel for the State pleaded that even if the Court comes to the conclusion that evidence of witness Premji Vaghji and witness Dahya Sabur does not inspire confidence, conviction of the appellants should be sustained on the evidence of injured complainant Dhanji which is corroborated by medical evidence as well as find of blood on the farsi produced by him and there being no substance in the appeals, both the appeals should be dismissed.

8. We have heard the learned counsel for the parties at length and reappreciated the evidence on record. The fact that deceased Raghavbhai died a homicidal death is not in dispute. That fact stands amply proved by the evidence of Dr. Sunil Nagori who is examined as P.W.6 at Exh.20. Further postmortem notes prepared by Dr. Nagori would indicate that the deceased had sustained injuries on different parts of his person and that cause of his death was head injury sustained by him. The injuries sustained by the deceased are also mentioned in detain in inquest report which is produced on the record of the case at Exh.16. Thus, we are of the opinion that the learned Judge rightly concluded that it was proved by the prosecution that the deceased had died a homicidal death. The said finding being eminently just, is hereby upheld.

9. So far as the incident in question is concerned, the same is unfolded through the evidence of injured complainant Dhanji Vaghji Vanker, who is examined as P.W.1 at Exh.12. This witness in his evidence before the Court has stated that on August 4, 1993, he and his deceased brother Raghavbhai had gone to Nana Jepura village in search of their missing calf at about 7.00 P.M. and had reached the village at about 8.45 P.M. According to this witness, all the appellants were standing with their cycles near the temple of Baliya Dev

and when he and his brother had reached near the accused, accused Bhanuprasad had shouted that the witness and his brother would be done to death. According to this witness, on hearing shouts, his brother Premji accompanied by Dahyabhai Sabur had also come at the place of incident, but Bhanuprasad had given farsi blow to him and as he had tried to ward it off, an injury was caused on his right hand. The injured witness further claimed before the Court that his deceased brother had tried to rescue him, but accused Bhanuprasad had inflicted a blow with farsi on his forehead as well as second blow on the right side of his chest and 3rd blow on right shoulder, as a result of which his brother had fallen down. According to Dhanjibhai, he had tried to intervene and, therefore, Bhanuprasad had given 2 to 3 blows with back portion of his farsi on his right thigh and at that time accused Rajubhai was beating his brother Raghavbhai by means of hockey; whereas accused Kantibhai was giving blows with stick to his brother and when his brother had tried to get-up, accused Pratapsinh Amarsinh had thrown stones on his chest. According to this witness, on hearing his shouts, persons of village Jepura had rushed to the place of incident and they had found that his brother had expired. What is claimed by this witness is that thereafter sarpanch of village Jepura was called and on his arrival, he had gone to Halol Police Station to lodge complaint. According to this witness, from village Jepura he had gone to Pavagadh by foot and from Pavagadh to Halol they had gone in a truck and met his brother Harishbhai, who was at that time present at his residence and his brother had told him that he should go to the Police Station to lodge complaint and narrate the incident as it had happened. The witness has further stated that after lodging the complaint he had gone to Hospital for treatment and after taking treatment he had gone to his residence. The witness claimed in his evidence that Dahyabhai Saburbhai who had tried to intervene in the incident, had also sustained injuries due to fist blow given by accused Rajubhai Raiyajibhai. The witness identified before the Court the farsi which was used by accused Bhanuprasad in the commission of crime. He also identified pieces of hockey stick, as according to him, accused Rajubhai Raiyajibhai had given blow of hockey stick with such a force that it had broken into three pieces. The witness firmly stated before the Court that he had identified all the accused in the light to street bulb.

10. In his cross-examination, the witness denied the suggestion of the defence that he had weapon with him on the day of incident. The witness also denied the

suggestion of defence that he was armed with a stick; whereas his deceased brother was armed with an axe. The witness further stated that when they had reached near the temple at 8.45 P.M., the accused were standing 50 ft. away from the said temple with their cycles and that the scuffle had continued for 10 to 15 minutes. The witness stated in his cross-examination that though he had received injuries, he had not tried to run away from the place of incident. He denied the suggestion made by the defence that he had tried to give any stone blow to any of the accused to save his brother. Further he admitted that he had not picked-up any stone nor pelted the same at any of the accused to save his brother. He denied the suggestion that the complaint was dictated by his brother who was an advocate and claimed that he himself had given the complaint as he had seen the incident. This witness admitted that accused Bhanuprasad was residing in his falia, but denied the suggestion that in order to snatch house of Bhanuprasad, he was falsely deposing against the accused.

11. So far as second eye witness Premji Vaghji is concerned, we find that he is elder brother of deceased Raghavbhai. According to this witness, he had gone to village Jepura in search of their calf in the company of Dahyabhai Saburbhai and when they were proceeding towards Jepura village, he had heard some shouts for killing the deceased, as a result of which, both had rushed towards the village and seen that Bhanuprasad was inflicting farsi blows on his brother; whereas accused Kantibhai Raiyajibhai was giving stick blow to his brother and accused Rajubhai Raiyajibhai was inflicting blows with hockey stick to his brother. According to this witness, accused Pratapsinh had also pelted stones on his brother, one on his chest and another on his leg and that his brother Dhanji was also assaulted. This witness has also claimed that on shouts being raised, village people had gathered together and, therefore, the accused had run away. The evidence of this witness would show that his injured brother Dhanji in company of sarpanch had gone to lodge complaint at Halol Police Station and complaint was lodged. This witness also identified the accused as the persons who had committed crime in question. In cross-examination, the witness stated that he had gone in search of their missing calf after his deceased brother and Dhanji had left house in search of missing calf. The witness stated that he had no enmity with his brother and that he had not tried to intervene in the incident. According to this witness, electric bulb was in working condition and, therefore, he was able to identify the accused. The witness denied the suggestion made by the

defence that he had not witnessed the incident and that he was falsely deposing against the accused.

12. The evidence of third eye witness Dahyabhai Saburbhai recorded at Exh.19 indicates that he in the company of wintess Premji had gone in search of missing calf at 7.00 P.M. on August 4, 1993 and they had gone to village Gokalpura and thereafter to village Jepura. This witness also claimed that when they were near the outskirts of village Jepura, they had heard shouts of killing Raghavbhai and on hearing shouts, they had rushed there and seen that Bhanuprasad, Rajubhai, Kantibhai and Pratapsinh were assaulting the deceased. According to this witness, fatal blow was given to the deceased by accused Bhanuprasad with farsi; whereas accused Rajubhai was giving blows with hockey stick to the deceased and accused Kantibhai was giving blows with stick on the back of the deceased. The witness has further informed the Court that accused Pratapsinh had given blows with stones to the deceased; whereas accused Rajubhai had given fist blow on his nose, as a result of which he had sustained injury.

13. During cross-examination, the witness stated that he had heard shouts of help raised by injured Dhanji and, therefore, he in the company of witness Premji had rushed towards direction in which the incident had taken place. The witness denied the suggestion that he was a got-up witness and was supporting the prosecution case falsely. According to this witness, quarrel continued for ten minutes. Though the witness admitted that the incident had happened during rainy season, he claimed that he was able to identify the accused because of light of bulb which was burning.

14. Dr. Nagori, who is examined at Exh.20, has narrated in detail the injuries sustained by the deceased which were found by him while performing autopsy on his dead body. The doctor has specifically stated that he had noticed six external injuries while performing postmortem. The injuries noticed by the doctor were as under : (i) Incised wound on left frontal bone extending from middle of eye-brow upto 1st hair line oblique, bone deep and gone cut upto brain about 6 cm x 2 cm x 2 1/2 cm (ii) Incised wound left frontal aspect middle part back side about 4 cm x 1 cm x 1 1/2 cm, (iii) Incised wound left elbow back side 3 cm x 1 1/2 cm x 1 cm, (iv) Abrasion left F.A. upper 1/3 vertical, (v) Incised wound left leg middle part 2 1/2 cm x 1 1/4 cm x 1/2 cm, and (vi) Abrasion right knee joint - reddish blue contusion mark, right arm lateral 1 1/2 cm x 7 cm x 2 cm fracture

of right knee limb. The doctor specifically stated in his evidence that cut injuries noticed by him on the person of the deceased were possible by muddamal article farsi. The doctor firmly stated before the Court that injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. According to the doctor, injury on left elbow was possible by a stick and fracture of knee was possible by pelting of stones. The doctor informed the Court that the external injuries were corresponding to internal injuries.

15. The doctor further stated that on August 5, 1993, he had examined Dhanjibhai Vaghjibhai Vankar and had found incised wound on right forearm upper 1/3rd and its measurement was 1 1/2 cm x 1 1/2 cm. According to the Doctor, the wound was bleeding. Further the doctor stated that he had also found contusion on right hip of the complainant which was lateral and measurement of which was 4 cm x 2 cm. According to the Doctor, the contusion was red in colour. The doctor opined that injuries sustained by Dhanjibhai could have been caused by sharp cutting instrument as well as hard and blunt substance. The Medical Officer further stated that he had examined Dahyabhai Saburbhai Harijan on May 5, 1993 and had found pain in his both the legs as well as contusion and abrasion on left back side of 4 cm x 1 cm measurement and reddish in colour.

16. During the cross-examination, the witness stated that the deceased had suffered all the injuries on left side of his person and that he had not noticed any injury either on his chest or on his back. According to the doctor, except incised wounds sustained by the deceased, other injuries which were found on his person were simple in nature. The doctor specifically stated that fracture was result of blow given to the deceased. The doctor denied suggestion that injuries sustained by witness Dahyabhai were simple and were possible by a fall. According to the doctor, Dahyabhai could have sustained injury if he was dragged. The witness also stated in his cross-examination that a forceful push given to Dhanjibhai could have caused injuries which were found on his person. After looking to the muddamal farsi, the doctor stated that it was round shaped and that injuries no.1, 2, 3 & 5 noticed by him on the dead body of the deceased were possible by said farsi.

17. On reappreciation of evidence of the three eye witnesses, we are of the opinion that it is not safe to rely upon the evidence of witness Premji Vaghji and witness Dahyabhai Saburbhai. Witness Dahyabhai Saburbhai

in his deposition before the Court has stated that he in the company of Premji had left village pavagadh in search of calf at about 7.00 P.M. and had gone to village Gokalpura. In para-4 of his deposition, the witness has stated that they had spent about 2 hours at village Gokalpura and thereafter they had come to village Jepura at about 10.00 P.M. or 11.00 P.M. According to this witness, the distance between Pavagadh and Gokalpura is 2 KMs. whereas the distance between Gokalpura and Jepura is 1 KM. From the evidence of this witness, it becomes evident that this witness in the company of Premji could not have reached village Jepura before 10.00 P.M. at all. Under the circumstances, presence of this witness at the time of incident becomes doubtful. Further according to this witness, accused Rajubhai Raiyajibhai had given fist blow on his nose, as a result of which he had sustained bleeding injury. The medical evidence of Dr. Nagori does not indicate that he had found any injury on the nose of this witness. Thus, regarding his own injury, this witness is not supported by medical evidence. Moreover, contradictions which have been brought on record of the case would indicate that he had not stated in his police statement that Bhanuprasad had given second blow of farsi on hand of the deceased. He had also not stated in his police statement that Bhanuprasad had given blow with farsi on the head of the deceased. On overall view of the evidence of this witness, we are satisfied that it is doubtful whether the witness had any opportunity of witnessing the incident in question.

18. Once the evidence of witness Dahyabhai Saburbhai becomes doubtful, it would have direct impact on the evidence of witness Premji Vaghji. On reappreciation of evidence of witness Premji Vaghji, we find that this witness has not referred to his going to village Gokalpura in the company of witness Dahyabhai Saburbhai at all. Thus, this witness has suppressed material facts while giving deposition before the Court. Further this witness had not made any attempt to save either the injured or the deceased and, therefore, his conduct raises doubt about he having witnessed the incident. Moreover, this witness has also stated in his substantial evidence before the Court that witness Dahyabhai Saburbhai was given fist blow by accused Rajubhai Raiyajibhai, as a result of which witness Dahyabhai Saburbhai was bleeding, but as noticed earlier, no injury on nose of witness Dahyabhai Saburbhai was found by Dr. Nagori at all. Further the names of these two witnesses do not appear as eye witnesses in the F.I.R. lodged by Dhanjibhai. For all these reasons, we are of the opinion

that it is not safe to rely upon the evidence of witness Premji Vaghji and witness Dahyabhai Saburbhai for the purpose of upholding conviction of the appellants.

19. This brings us to the consideration of evidence of injured Dhanjibhai Vaghjibhai Vanker. We may mention that this witness is injured witness and, therefore, his presence at the time of occurrence can hardly be doubted. The well established principle of law is that an injured witness would not spare the real assailant to go scot free and falsely involve innocent persons. It is relevant to notice that not only witness Dhanji is an injured witness, but he is real brother of the deceased and, therefore, he would hardly be interested in screening the real assailants. The discussion of evidence of witness Dhanji makes it evident that his evidence stands fully corroborated by medical evidence on record. The medical officer has found that the deceased had sustained injuries which could have been caused by sharp cutting instrument as well as by hard and blunt substance and, therefore, there is no reason for us to disbelieve the evidence of witness Dhanji when he claims that accused Bhanuprasad had caused injuries to the deceased by means of farsi; whereas accused Rajubhai Raiyajibhai had caused injuries by means of hockey stick and accused Kantibhai Raiyajibhai had caused injuries by stick; whereas accused Pratapsinh Amarsinh had pelted stones at the deceased. Further the injuries which could have been caused to the deceased by hard and blunt substances are also noted in detail in inquest panchnama including injury on the back of the deceased and this evidence of this witness stands corroborated by contemporary record. The evidence of witness Vanrajbhai Talshibhai Patel P.W.4 Exh.17 establishes that the farsi which was used by accused Bhanuprasad in the commission of crime was produced by him in his presence and that the same was found blood stained and was attached. The evidence of this witness amply stands corroborated by the contents of panchnama Exh.18 as well as evidence of investigating officer. The report of serologist indicates that on analysis of the blood on the farsi, it was found that it was of the same blood group as that of the deceased. The discovery of blood of the same group on the weapon of the offence would indicate that accused Bhanuprasad was in close proximity of the deceased when he was fatally wounded and had all opportunity of committing crime in question. It is relevant to notice that it was never suggested to injured Dhanjibhai that he had any enmity worth the name with other accused at all and, therefore, false implication of the other accused stands totally ruled out.

20. The contention that there was no sufficient light and, therefore, the accused could not have been identified, is devoid of substance. Witness Dhanjibhai Vanker has firmly and specifically stated that electric bulb was burning and he was able to identify the accused with the help of light emanating from the bulb. It is to be remembered that accused Bhanuprasad was staying in same falia in which the complainant was residing and he could have been identified even by voice when he had exhorted to kill the deceased. Witness Babubhai Ahmedbhai Shekh in whose presence panchnama of place of incident was drawn, has also firmly stated in his deposition recorded at Exh.15 that there was light at the place of incident. It is true that inquest on the dead body of the deceased was held near the house of one Kishorbhai. However, it is relevant to notice that inquest report is one of the important evidence in a criminal trial and as injuries sustained by the deceased were required to be noted meticulously, the body of the deceased was taken near the house of one Kishorbhai where the inquest panchnama was prepared. However, merely because inquest panchnama was prepared near the house of Kishorbhai, one cannot jump to the conclusion that there was no sufficient light at the place where the incident had taken place or that injured Dhanjibhai to whom all the accused were known, had no opportunity of indentifying them as perpetrators of crime. Moreover, evidence of witness Rajendra Kantilal P.W.7, Exh.28 establishes that electric D.P. was at a distance of 40 ft. from the place of incident and a bulb of 60 Watt was burning. This fact is not only mentioned in the panchnama of place of the incident which is produced on the record of the case at Exh.29, but is also mentioned in the map of place of incident prepared by witness Nisar Ahmed Rahemanji Khatri, P.W.10 Exh.34. In the light of evidence which is discussed above, if evidence of witness Pravinsinh Parbatsinh , PW 11, Exh.36 is viewed, it becomes evident that the said witness had falsely claimed before the Court that since 1980 street light in village Jepura was not working. Witness Pravinsinh did not support the prosecution case and, therefore, on the request being made by the learned Public Prosecutor, he was permitted to be cross-examined. The material contradiction proved on the record of the case with reference to previous statement of this witness, makes it manifest that this witness is not witness of truth and cannot be relied upon for the purpose of holding that there was no sufficient light with the help of which injured Dhanji could have identified the accused. The evidence led by the prosecution regarding identification

is trustworthy as well as consistent and therefore, we accept the same.

21. The contention that there was delay in filing the first information report and, therefore, the case of the prosecution should be disbelieved, has also no substance. It is relevant to notice that after the incident, village people had gathered together and injured Dhanjibhai in the company of Sarpanch had gone first of all to the place where his lawyer brother was residing and had narrated the incident to him. Witness Harjibhai Vaghjibhai, who is an advocate and who is brother of injured Dhanjibhai, had advised Dhanjibhai to go to Halol Police Station and lodge complaint regarding the incident as it had happened. Thereafter injured Dhanjibhai had gone to Halol Police Station and lodged first information report. It is to be remembered that the day of incident was a rainy day and the evidence of injured Dhanjibhai would indicate that vehicle was not easily available and, therefore, he had to walk certain distance. According to him, from the sim of village Jepura, he had reached village Jepura at about 11.30 A.M. and had thereafter gone to village Pavagadh, from where he had boarded a truck and reached Halol where he had met his brother and had thereafter gone to police station for the purpose of lodging complaint. Having regard to the evidence of injured Dhanjibhai, we are of the opinion that there was no delay in lodging the first information report and no benefit of doubt can be given to any of the convicted appellants on the ground that there was delay in filing the first information report, more particularly when it is not established by the defence that injured Dhanjibhai had any enmity with other accused at all. The contention that there is delay in despatch of complaint to Magistrate and, therefore, the prosecution case in its entirety should be disbelieved, has also no substance. In Sarwan Singh & ors. v. State of Punjab, (1976)4 SCC 369, the Supreme Court has explained that merely delay in despatch of F.I.R. is not a circumstance which can throw out the prosecution case in its entirety. The Supreme Court after referring to its earlier decision in Pala Singh v. State of Punjab (1972)2 SC 640 has held that the delayed receipt of report by the Magistrate concerned cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. Applying the principles laid down by the Supreme Court to the facts of the present case, we find that as such there is no delay in despatch of the first information report to the learned Magistrate and even if it is assumed that there is some delay, it cannot be treated as fatal to the prosecution case, more

particularly when it is not suggested by the defence that the complainant had any enmity either with accused Pratapsinh or accused Rajubhai or accused Kantibhai.

22. The contention that injured complainant had got filed the complaint as dictated by his brother advocate after due deliberation and therefore, the prosecution case should be disbelieved,is also devoid of merits. In this connection, we find that Harjibhai Vaghjibhai, who is advocate and who is brother of injured Dhanjibhai, is examined as P.W.13 at Exh.43. No such suggestion is made to this witness at all. In absence of any evidence to the contrary, we are of the opinion that the assertion made by injured Dhanjibhai that he himself had lodged complaint regarding the incident and that his brother who is an advocate had not played any role, deserves acceptance.

23. The contention that the sole appellant in Criminal Appeal No.1089/94 was not present at the time of incident and that he was serving as watchman cannot be accepted. It is relevant to notice that except producing xerox copy of report submitted by him to his so-called superior officer, the appellant in Criminal Appeal No. 1089/94 did not adduce any evidence in support of his plea of alibi. It is well settled that plea of alibi is required to be substantiated by leading cogent evidence. It is true that plea of alibi has to be established on preponderance of probability and the burden is not that heavy as is on the prosecution to prove its case beyond reasonable doubt. However, from the record of the case, we find that except producing a xerox copy of report submitted by himself to someone, no attempt was made by appellant Pratapsinh to establish that on the day of incident he was discharging duties as watchman elsewhere and had no opportunity to commit the crime. The evidence of investigating officer Mr. Pathak makes it evident that all the accused were arrested on August 5, 1993; whereas the xerox copy of report submitted by appellant Pratapsinh mentions that he had performed duties as watchman on August 5, 1993. This is contradiction in terms and the report produced by Pratapsinh cannot be relied on. On overall view of the matter, we are of the opinion that plea of alibi taken-up by Pratapsinh is not proved and no benefit of doubt can be given to the appellant.

24. We may state that we have relied upon the sole testimony of injured Dhanjibhai for the purpose of upholding conviction of the appellants. In this regard, we may observe that as per settled law, the accused can

be convicted on the sole testimony of a sole witness if the testimony is found to be trustworthy and reliable. As a general rule, a Court can and may act on the testimony of a single witness, though uncorroborated, provided that the testimony of that single witness is found to be entirely reliable. However, after going through the evidence of injured Dhanjibhai we find that his testimony is straight forward, cogent and corroborated in material particulars by medical evidence as well as find of blood of the same group as that of the deceased on farsi. Under the circumstances, conviction of the appellants for the offences punishable under sections 302, 324, 506(2) read with 114 of the Indian Penal code being well founded, deserves to be upheld in these two appeals.

25. So far as conviction of the appellants under section 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, we find that the appellants in Criminal Appeal No. 1061/94 admittedly belong to scheduled caste and, therefore, in view of the provisions of section 3 of the said Act, they could not have been found guilty of the offences punishable under sections 3(1)(x) & 3(2)(v) of the said Act. So far as the sole appellant in Criminal Appeal No. 1089/94 is concerned, the prosecution has not led any reliable evidence which would establish that the appellant Pratapsinh had intentionally insulted or intimidated with intent to humiliate either injured Dhanjibhai or his deceased brother in any place within public view, nor any evidence is led that Pratapsinh committed an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more against either the injured or the deceased on the ground that the deceased or the injured was a member of scheduled caste or scheduled tribe. Under the circumstances, the conviction of the appellants in two appeals of the offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being totally ill-founded, deserves to be set aside. Though we find from the impugned judgment that the learned Sessions Judge has not imposed separate punishment on the appellants for the offences punishable under sections 324, 506(2) I.P.C., we are of the opinion that having regard to the sentence undergone by the appellants, no purpose would be served by imposing any punishment for those offences and, therefore, we have not imposed any separate punishment on the appellants for those offences.

For the foregoing reasons, both the appeals are

partly allowed. The conviction of the appellants of the offences punishable under sections 302, 324. 506(2) read with section 114 of the Indian Penal Code is upheld. So also the sentence of life imprisonment imposed on them for commission of those offences is also hereby affirmed. So far as conviction of the appellants of the offences under sections 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the same is hereby set aside and quashed.

The muddamal articles are directed to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal,J.)

(A.H.Mehta, J.)

(patel)